



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2013

Mr. Anthony Safi
Counsel for El Paso Independent School District
Mounce, Green, Myers, Safi, Paxson & Galatzan
P.O. Box 1977
El Paso, Texas 79999-1977

OR2013-01479

Dear Mr. Safi:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 477191 (EPISD ORR# 2012.421).

The El Paso Independent School District (the "district"), which you represent, received a request for information involving a named employee. You state some of the requested information either has been or will be released. You claim some of the remaining requested information is excepted from disclosure under sections 552.116 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

We first note the submitted information includes redacted and unredacted education records. The United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records

¹This letter ruling assumes the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

ruling process under the Act.² Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. See 34 C.F.R. § 99.3 (defining “personally identifiable information”). Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address FERPA with respect to the education records you have submitted. Such determinations under FERPA must be made by the educational authority in possession of the education records.³ We will address your exceptions to disclosure under the Act.

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

²A copy of the Department of Education’s letter may be found on the attorney general’s website, <http://www.oag.state.tx.us/open/20060725usdoc.pdf>.

³If in the future the district obtains parental consent to submit unredacted education records and seeks a ruling from this office on the proper redaction of the records in compliance with FERPA, we will rule accordingly.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state some of the submitted information consists of audit working papers that were prepared or are maintained by the district in connection with an internal investigation authorized by the district's board of trustees and the district superintendent. You explain the district's internal auditor conducted the investigation under the authority of section 11.170 of the Education Code. *See* Educ. Code § 11.170 (district's board of trustees may select internal auditor who reports directly to board). You state the internal auditor's final report will be provided to the requestor. Based on your representations and our review, we conclude the information at issue consists of audit working papers for purposes of section 552.116. Therefore, the district may withhold that information, which we have marked, under section 552.116 of the Government Code.

You also claim section 552.135 of the Government Code, which provides as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135. We note that because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). We also note individuals who provide information in the course of an investigation but do not make the initial report are not informants for purposes of section 552.135 of the Government Code. You state the information you have marked in the rest of the submitted documents pertains to district employees who reported possible violations of section 247.2 of title 19 of the Texas Administrative Code to district personnel. *See* Educ. Code § 21.041(b) (TEA shall propose rules providing for disciplinary proceedings); 19 T.A.C. § 247.2 (Code of Ethics and Standard Practices for Texas Educators). Based on your representations and our review, we conclude the district must withhold the information we have marked under section 552.135 of the Government Code. Although the district also claims section 552.135 for other information, we find the

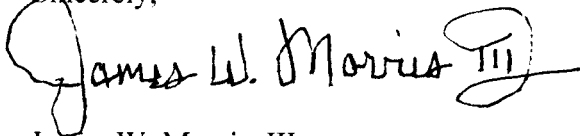
remaining information at issue does not reveal the identity of an informer for purposes of section 552.135. We therefore conclude the district may not withhold any of the remaining information on that basis.

In summary, the district (1) may withhold the information we have marked under section 552.116 of the Government Code and (2) must withhold the information we have marked under section 552.135 of the Government Code. The rest of the submitted information must be released. This ruling does not address the applicability of FERPA to any of the submitted information. Should the district determine any of the submitted information consists of "education records" that must be withheld under FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris III". The signature is stylized with a large, looped initial "J" and a trailing flourish.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 477191

Enc. Submitted documents

c: Requestor
(w/o enclosures)